

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
v. : 10-CR-433 (SLT)
:
JONATHAN BRAUN, : June 3, 2010
:
Defendant. : Brooklyn, New York
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR DETENTION HEARING
BEFORE THE HONORABLE VIKTOR V. POHORELSKY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE CLERK: Criminal cause for detention hearing.

2 USA v. Braun, 10-CR-433.

3 Counsel, please note your appearances.

4 MR. TISCIONE: Steven Tiscione for the government.

5 MR. SHARGEL: Gerald Shargel and Ross Kramer for
6 Mr. Braun. Good afternoon, your Honor.

7 THE COURT: Good afternoon.

8 I think the only matter is the question of
9 detention; am I correct about that?

10 MR. SHARGEL: That's correct.

11 MR. TISCIONE: There's actually also an
12 application for an order of excludable delay.

13 THE COURT: Oh, okay.

14 MR. SHARGEL: Which we've executed.

15 THE COURT: All right. Should I take care of that
16 first? That will be the easiest thing to take care of, I
17 think.

18 MR. TISCIONE: Fine.

19 THE COURT: I do have an application to exclude
20 time between today and June 17, that is time under the
21 Speedy Trial Act, and it's premised on plea negotiations, as
22 well as trial preparations, given the complexity of the
23 case.

24 Is June 17 the first appearance before Judge
25 Townes?

1 MR. SHARGEL: That's the next appearance before
2 Judge Townes, your Honor.

3 MR. TISCIONE: It is, your Honor.

4 THE COURT: All right. This document, the
5 application, appears to be signed by Mr. Braun, as well as
6 his counsel.

7 Did you sign the document, Mr. Braun?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Under federal law have the right to
10 have your trial in this case begin within seventy days after
11 your first appearance on the indictment, and by signing this
12 document you're agreeing that the 14 days between today and
13 June 17 will not be counted when computing that seventy-day
14 deadline.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And for the reasons proposed, the
18 entry of this order serves the ends of justice so I've
19 entered it.

20 All right. Now, to the question of detention
21 pending trial, I did receive and have reviewed a letter
22 submitted by the government, dated May 31. I'm presuming
23 that counsel for Mr. Braun received that as well?

24 MR. SHARGEL: Yes, we have.

25 THE COURT: Is there anything that the government

1 wishes to add to the letter at this point?

2 MR. TISCIONE: Your Honor, at this time I think I
3 would defer to Mr. Shargel. Since the government has filed
4 a lengthy detention letter, I think our position has been
5 made clear. Obviously, I would appreciate an opportunity to
6 respond to anything Mr. Shargel says on the question of
7 bail, but I believe I'll turn it over to him.

8 THE COURT: All right. Mr. Shargel?

9 MR. SHARGEL: Your Honor, before we get to
10 conditions, I would like to address the government's
11 submission, the submission of May 31, 2010. Because I say
12 with all respect that this submission is filled with
13 inaccuracies, mis-statements, mis-information, and I'd like
14 to tell you precisely why.

15 On the question of risk of flight, I'll address
16 the risk of flight first. The government suggests that Mr.
17 Braun is a risk of flight because, principally, they
18 prominently displayed at the beginning of the letter at page
19 three, or here at the beginning of the letter at page three.
20 The government states that there was in May of 2009, and my
21 own investigation revealed that this was mid-May 2009, that
22 Mr. Braun fled to Israel to avoid apprehension. And the
23 word that I think was carefully chosen is "immediately,"
24 that you'll see on page 3, that he "immediately" fled to
25 Israel to avoid apprehension.

1 That is plainly wrong because we have Mr. Braun's
2 passport here. I've handed it up to your Honor, and you'll
3 see that he left at the end of July of 2009, which is hardly
4 "immediately," and it's hardly probative of the fact that he
5 was fleeing from apprehension or arrest. I can submit this
6 to the Court at the present time, the passport, and it shows
7 that it was on July 24, 2009 that Mr. Braun went to Israel.

8 It's worthy of note that I am submitting to the
9 Court his passport because the letter that the government
10 submitted is replete with suggestions that Mr. Braun had
11 access to false travel documents, that he was able to travel
12 in other names. Well, that's flatly wrong. He went to
13 Israel and he came back from Israel with the passport, the
14 only passport that he has, issued to him with his picture,
15 his name, his lawful passport.

16 It's also true that during this period of time he
17 traveled to other countries. That's true, to Canada, and we
18 have entries in his own name regarding the travel to Canada.
19 In January of 2010, he went to the Bahamas. Again, we have
20 the passport which demonstrates that he traveled under his
21 own name.

22 There came a time in the spring of 2010 when he
23 was arrested in Staten Island on a driving charge, a
24 reckless driving charge. The case was resolved in the
25 Staten Island court, and Mr. Braun retained counsel and

1 appeared in court, and he was under his own name and he
2 never used another name.

3 But the unkindest cut of all, if you will, is in
4 support of the proposition that he was using false
5 identification documents or that he had access to false
6 identification documents. The prosecution heralds what it
7 found during the search of his house and said that there
8 were five driver's licenses, five driver's licenses, that
9 were obviously fraudulent.

10 Well, a check with motor vehicles would reveal
11 that each one of those documents was issued by the New York
12 State Department of Motor Vehicles. Not only were they not
13 obviously fraudulent, they were not fraudulent at all. And
14 moreover, as the government itself acknowledges in the
15 letter, they're all in his name; all, as they say,
16 identical, and do not provide any other identification, do
17 not provide identification in another name. They were all
18 lawful, legitimate driver's licenses that were obtained
19 after driver's licenses were lost. They lend no support to
20 the proposition that Mr. Braun was a risk of flight.

21 He went to California during this period of time
22 when they say that he was fleeing arrest and traveled, went
23 to airports, all on his own name. All of the travels,
24 whether it be Canada, or Israel, or California, or the
25 Bahamas, were all in his own name. And there is no

1 suggestion, there is no proof, there is no evidence that he
2 ever traveled under another name.

3 Let me go back and tell you about Mr. Braun and
4 let me put before you the nature and circumstances of this
5 individual.

6 The fact is that he has lived in the same house
7 with his parents his entire life. He's 27 years old and
8 he's lived in the same place. You can see from the
9 appearance -- his family is in the courtroom. This is
10 tightknit family who is willing to support him, who is here
11 to support him, people who are here, eight or nine people,
12 who are willing to sign a bond. And they have, again by
13 their mere presence here today, evidenced their support of
14 him.

15 But more importantly, I'm going back to his own
16 characteristics and his own history and characteristics. He
17 has one prior arrest, a misdemeanor that resulted in an ACD,
18 a marijuana arrest when he was 19 years old, and it resulted
19 in an adjournment in contemplation of dismissal. It was
20 dismissed, the case was dismissed and the record sealed.
21 That's his criminal history.

22 As I said a moment ago, he still lives with his
23 parents. His mother is a New York City school teacher.
24 She's a first-grade teacher. His father is a shoe salesman.
25 These are modest people. They're willing to put up their

1 house. They're willing to put up a house that they've owned
2 for over thirty years. Their various family members,
3 including a ninety-year-old parent is in the house, and Mr.
4 Braun's sister is in the house. There is moral suasion
5 here, ample moral suasion, not only with respect to his
6 parents, but with respect to family members who are willing
7 to sign the bond.

8 Mr. Braun is currently unemployed; that's true,
9 but he has a history, a long history, of employment. He
10 owned his own business for seven or eight years, a cellular
11 phone store. He worked in selling software to pharmacies in
12 New Jersey. He also worked in another retail business
13 related to cellular phones. So he's had a history of
14 employment.

15 So under the circumstances, the notion that he is
16 a risk of flight is nonsensical. There is no suggestion
17 that he is a risk of flight. There is no suggestion that he
18 used false travel documents. There is no suggestion that he
19 had fled to avoid apprehension. He went to Israel for a
20 period of time. And as I said -- and I emphasize this and I
21 repeat this because the government so strongly urges this as
22 indication that he actually took flight when he didn't to
23 suggest that he had left immediately after a stash house was
24 raided in May of 2009. I think that the same --

25 And by the way, your Honor, under 3142C(b)(1),

1 where one of the conditions -- and obviously, I'll be
2 talking about conditions in a moment -- where one of the
3 conditions suggested right in the statute is that the
4 defendant be in the custody of another person. And in this
5 situation we have, as I said, his parents, who are willing
6 to assume that supervision as set forth in the statute.

7 So, in addition to the question of risk of flight,
8 the government claims that they've proven by clear and
9 convincing evidence that he is a danger to the community.
10 And I respectfully submit to your Honor that, once again,
11 the notion that he's a danger to the community, the
12 submission by the government is wholly, wholly, inadequate.

13 They say that he's a danger to the community
14 because he will resume or there's a likelihood that he will
15 resume his criminal activities, and they cite the
16 proposition that to be a danger to the community, it doesn't
17 have to be a physical danger. Well, the government can make
18 that contention in any case. And in any case where someone
19 is charged with a serious crime -- and I'm not minimizing
20 the seriousness of the crime that's alleged in this
21 indictment. But nevertheless, the government could always
22 say that someone poses a substantial likelihood, as they say
23 here, that he'll resume his criminal activities.

24 They go on to say that according to a cooperating
25 witness CW1, that the cooperating witness has stated, quote

1 -- and I quote from their letter, "In sum and substance,"
2 that Mr. Braun threatened and assaulted a worker, and it
3 appears that the claim is that this happened in California.
4 There is nothing in this letter that suggests how CW1 knows
5 this. There is nothing in this letter to suggest how CW1
6 came to this information, and there is no suggestion that
7 CW1 is reliable in this regard. And the notion that this
8 was said "in sum and substance" leaves a question mark as to
9 what occurred here. CW1 is not corroborated by any other
10 evidence whatever.

11 And then the government goes on to say at page 6
12 of the letter that a criminal associate, and text messages
13 with a criminal associate, who is his ex-girlfriend, and
14 text messages are quoted to suggest that somehow he's a
15 danger to the community because he is interfering with this
16 criminal associate.

17 This is, as I said a moment ago, an ex-girlfriend,
18 and reference is made to the ex-girlfriend later on in the
19 letter. Reference is made to what, essentially, was the
20 equivalent of a lovers' spat. There was an argument that he
21 was having with his girlfriend and text messages were being
22 hurled back and forth. There is nothing to suggest by clear
23 and convincing evidence that there is a danger or Mr. Braun
24 poses a danger.

25 But as we know, the question in a case like this

1 with a presumption and in order to rebut the presumption,
2 there are conditions that we are submitting. And here is
3 the bail package that I am submitting, your Honor. I am
4 submitting a bail package, a million-dollar bond signed by
5 nine suretors with real property in excess of a million
6 dollars to support that bond.

7 I am suggesting that the signature of these
8 suretors presents ample moral suasion. The people who are
9 willing to sign the bond are people who have owned their
10 homes, in some instances, for a very long period of time.
11 In some instances, they are the principal assets of these
12 people, and the moral suasion here is very strong. I am also
13 suggesting a bracelet with a GPS, which has proved to be
14 efficacious.

15 The government cites cases that are twenty or more
16 years old going back to the 1990s or even earlier where the
17 Second Circuit Court of Appeals had essentially written in a
18 negative way about home detention. But as everyone in this
19 courtroom knows, the efficaciousness of home detention and
20 the use of home detention has become familiar in this
21 courthouse.

22 It's only two weeks ago that the Second Circuit
23 Court of Appeals in United States v. Persico remanded, as
24 your Honor may know, remanded a case where bail had been
25 denied at the district court level, and the condition

1 proposed there was remanded on another legal ground, but the
2 condition proposed there was house arrest and the Second
3 Circuit said not a negative word about house arrest.

4 The idea of house arrest and complete house
5 arrest, as I said a moment ago, has become familiar in this
6 district, as well as in the Southern District. And
7 according to the pretrial services people, the
8 efficaciousness of house arrest is now well familiar, and
9 the efficaciousness of using a GPS particularly in Staten
10 Island, where there is no interference from tall buildings
11 -- that's sometimes argued in the Southern District of New
12 York. The efficaciousness of house arrest with GPS has been
13 recognized and I think it's appropriate in this case.
14 Obviously, there would be a surrender of the passport.

15 But in addition to all that, the moral suasion, as
16 I said a moment ago, the moral suasion that exists with
17 respect to the number of people who are willing, responsible
18 people, who are willing to come forward and not only sign
19 the bond, but place their property is very profound I
20 respectfully submit.

21 So I think that under all of the circumstances,
22 the government has not shown by a preponderance of the
23 evidence risk of flight. It has not shown by clear and
24 convincing evidence danger to the community. I think that
25 under the circumstances of this case, the presumption has

1 been rebutted. The government goes in a paragraph arguing
2 that this is not a "bursting bubble" presumption, that you
3 should still consider the fact that this is a narcotics case
4 where there is a ten-year minimum mandatory sentence as
5 charged.

6 First, you will note that the government doesn't
7 cite any Second Circuit authority for that proposition
8 whatever, and that each one of the cases they cite, each one
9 of the out-of-circuit cases that they cite, are more than
10 twenty years old.

11 So the first point that I'm making, given all of
12 these circumstances, is that the government has not met its
13 burden even with the presumption that it has under the
14 statute and that we have rebutted the presumption. That's
15 number one.

16 But, number two, the question then is: Are there
17 conditions which will satisfy any concerns about danger or
18 risk of flight. And I submit, particularly in light of this
19 showing, which is, I respectfully submit, inadequate, that
20 the conditions are more than ample to allay any concern
21 about risk of flight or danger to the community.

22 So I think under those circumstances -- you know,
23 Judge, it's not everyday that in a case with the charges
24 contained in this indictment that a young man comes before
25 you, 27 years old, here with his family to support him, a

1 tightknit, close family, a man who lives with his parents,
2 who is not out on his own, who has never had his own house,
3 who does not own his own car, who does not have any assets
4 overseas, who does not have any property overseas or in any
5 other jurisdiction.

6 He is a lifelong resident of New York. His roots
7 are deeply placed in Staten Island. They can't be more
8 deeply placed. He was born in Brooklyn and lived in Staten
9 Island, as I said earlier, from the moment of his birth 27
10 years living in Staten Island.

11 And I think under those circumstances with those
12 roots so deeply placed in the New York community, with the
13 support of his family, with the proposition that you would
14 have more than ample collateral for a million-dollar bond,
15 with the proposition that the people are willing to come
16 forward and essentially want -- so many people are here
17 because they wanted to share. There were people who came
18 forward and said, "I want to be part of this bond. I want
19 to be part of this bond. I want to be part of this process
20 because we want to show that we support our family member."

21 And I think that under those circumstances, with
22 house arrest, a GPS, a million-dollar bond, surrender of the
23 passport, that he should be released.

24 THE COURT: All right. Mr. Tiscione, did you have
25 anything you wanted to say in response?

1 MR. TISCIONE: I did, your Honor.

2 First, I would draw your Honor's attention to the
3 pretrial services report. And I think what's most notable
4 about the pretrial services report in this case is actually
5 the information that's not contained in here; specifically,
6 the fact that the defendant refused to provide any
7 information about his finances and his history of drug use.
8 Both of those are important factors that are typically
9 considered when considering how great a risk of flight
10 someone is, how likely they are to comply with conditions
11 that might be set, and if a bond is able to be set, the
12 amount of bond that's appropriate.

13 And based on the evidence that's been proffered by
14 the government in its detention letter, I submit to your
15 Honor that the defendant refused to answer those questions
16 because to answer those routine questions truthfully would
17 have revealed the enormous flight risk that the defendant
18 posed. The few questions he did answer to pretrial services
19 officers were peppered with half truths and outright lies.
20 And I will just point to two examples of that.

21 First, he stated that he's lived his entire life
22 with his parents in Staten Island, except for a brief time
23 in which he traveled back and forth to California. In fact,
24 the defendant lived in Florida for a time. He spent a
25 considerable amount of time in Canada. He lived abroad in

1 Israel and Canada while he was avoiding law enforcement
2 agents after a raid on his stash house in 2009.

3 Secondly, the defendant mentions that he owns or
4 used to own a cellular phone company. And it is true that
5 he did own that business, and that business did, in fact,
6 sell cellular telephones, but it also served as a vehicle
7 for the defendant to launder millions of dollars in drug
8 proceeds and to provide and supply his criminal associates
9 and underlings with untraceable, undocumented, and
10 unsubscribed telephones and Blackberry devices to commit
11 their criminal acts.

12 In response to some of the conditions that Mr.
13 Shargel has proposed, I would note to your Honor first that
14 electronic monitoring will not prevent the defendant's
15 flight. Electronic monitoring and home detention cannot the
16 defendant from fleeing. All they can do is tell us after
17 he's already fled.

18 And as your Honor will probably already know, but
19 if not, I'm sure pretrial services can inform you of this,
20 the realistic circumstances of these electronic monitoring
21 units is that by the time anyone who is in a position to do
22 anything about it is finally notified that the defendant has
23 left, it's already too late. He's probably already across
24 the border or somewhere overseas, and there's absolutely
25 nothing that we can do about it.

1 There has not been a single case that I know of
2 where somebody who has been on electronic monitoring that
3 has fled was prevented from fleeing because the electronic
4 monitoring bracelet was there. It doesn't prevent them from
5 leaving the house. It doesn't prevent them from leaving the
6 country. All it does is notify us after they've left.

7 Second, I would note Mr. Shargel had mentioned
8 that some of the text messages that were outlined in the
9 government's detention letter were nothing but a lovers'
10 spat, and the government will acknowledge that some of those
11 text messages were with the defendant's or what appeared to
12 be the defendant's ex-girlfriend.

13 However, the government would also note that that
14 same individual was a member of the defendant's drug
15 organization who received hundreds of thousands of dollars
16 of drug proceeds on behalf of the defendant. So it's not
17 simply a case of the defendant and a girlfriend having a
18 fight. This is, in effect, a member of his organization who
19 was threatening to rat him out to the police.

20 And I think it is significant that the response
21 that the defendant made to this individual is that if you
22 make my life uncomfortable, I will do the same to you in a
23 much worse way. Now, those words can be subject to
24 interpretation, but given the context that they're in, I
25 don't think there's any doubt that that is a serious risk of

1 the defendant tampering with witnesses or harming witnesses
2 or potential witnesses.

3 Now, as set forth in the government's letter,
4 there are a number of cooperating witnesses in this case,
5 who have previously had very strong and ongoing criminal
6 ties to this defendant. There is a very real risk that if
7 the defendant is released on any conditions of bond, he will
8 attempt to tamper, obstruct, or even harm these witnesses.
9 And the fact that he's on home detention with electronic
10 monitoring is not going to stop that because the defendant
11 would not do the dirty work himself. He would get one of
12 his underlings to do it.

13 And the fact is that this defendant was able to
14 control his entire criminal empire even though he was on the
15 run from the police and living abroad for several months.
16 And he was able to do this because this organization has
17 used elaborate electronic devices to maintain communications
18 with each other. Typically, they used encrypted Blackberry
19 devices where the phone features of the Blackberry devices
20 are deliberately removed, so they can only be used to
21 transmit pin-to-pin messages to other Blackberries on the
22 server.

23 And the investigation has revealed that,
24 typically, members of this organization will actually
25 purchase the server itself and a number of Blackberry

1 devices connected to that server, which are only connected
2 to each other and can only be used to send pin-to-pin
3 messages to other Blackberries on that network.

4 But the reason why this is important, your Honor,
5 is because this shows that the level of sophistication that
6 is particularly high. Now, there are many drug
7 organizations that employ sophisticated means to commit
8 their crimes, but I do think that this is -- what we're
9 seeing in this case is something entirely new and it's
10 entirely more sophisticated and more difficult for law
11 enforcement to monitor.

12 There's absolutely no way to intercept those
13 communications because the server is located overseas and
14 it's owned by the criminal conspirators. The only way to
15 see anything from these Blackberries is to actually seize
16 them from a member of the organization, and then you can
17 look at some of the saved text messages that are on there,
18 and that's exactly what we've done in this case. And in
19 particular, we seized two Blackberries from the defendant at
20 the time of his arrest, which contained numerous text
21 messages talking about marijuana shipments.

22 In particular, on the night of his arrest, a
23 shipment of fifty pounds of marijuana was brought down from
24 Canada to New York at the defendant's direction to an
25 individual in the New York area. That shipment was

1 intercepted by law enforcement; it was seized. There was
2 fifty pounds of marijuana in it and text messages discussing
3 that specific transaction were recovered on the Blackberry
4 that was found on the defendant at the time of his arrest,
5 and that's just one piece of evidence for one transaction.

6 The detention letter goes into great detail about
7 some of the other evidence in this case, and I think it's
8 particularly important to look at some of the other evidence
9 that was found at the defendant's house, which I note
10 that Mr. Shargel hasn't mentioned at all.

11 Like the fact that there was \$30,000 in cash
12 wrapped in rubber bands just lying around his house. That,
13 I submit to you is not the typical thing for someone to
14 have. There was also extensive drug records in the house.
15 Those drug records reflect hundreds of marijuana shipments,
16 thousands and thousands of kilograms of marijuana, hundreds
17 of thousands of dollars in drug payments and money that this
18 defendant had access to and was moving into the country, out
19 of the country, from here to California, from here to
20 Florida and back.

21 The defendant has access to an extensive amount of
22 money, virtually unlimited funds. If these records and the
23 evidence in this case is taken into account about the amount
24 of drugs that this defendant has trafficked -- and I think
25 it's also worthwhile to note that at the time of his arrest,

1 the defendant had 16 cell phones, including these two
2 encrypted Blackberry devices that I've already spoken about.

3 Again, while the fact that the defendant had 16
4 telephones doesn't in and of itself suggest that he's a
5 criminal, taken in context and with all of the other
6 evidence, it is certainly suggestive of, number one, the
7 fact that he's engaging in illegal activities; and number
8 two, that it's going to be very easy for him to get access
9 to another encrypted Blackberry or another means of
10 communication that he will be able to use from his home to
11 direct his underlings to either continue their drug business
12 or attempt to threaten, intimidate, or even harm witnesses
13 in this case.

14 And I think the only way to prevent that, the only
15 way to insure that the defendant will not tamper with
16 witnesses or continue operating his criminal enterprise is
17 to have him detained as the MDC where all of his
18 communications could be monitored and he won't have access
19 to use encrypted Blackberry devices and 16-plus prepaid cell
20 phones to direct his underlings.

21 THE COURT: All right.

22 MR. SHARGEL: May I respond?

23 THE COURT: Yes.

24 MR. SHARGEL: Well, first, I know full well that
25 both sides are permitted to submit evidence by proffer. I

1 understand that. But what you've heard from Mr. Tiscione
2 over the past minutes is essentially Mr. Tiscione's parade
3 of horrors of what could happen and what might happen, and
4 he pushes buttons like obstruction of justice, and if he
5 doesn't do something, he could get his underlings to do
6 something. And the fact remains that when I challenge him
7 on danger to the community about the information supplied by
8 a cooperating witness, we hear nothing about the basis for
9 the assertions that Mr. Tiscione is making, number one.

10 Number two, Mr. Tiscione points to the pretrial
11 services report and notes that there's no financial
12 information. That was on my advice, as I would advise any
13 client not to supply financial information where there is no
14 opportunity to fully -- that what it is should be on that
15 form. And with respect to drug use, that was on my
16 recommendation.

17 But the point is that the very pretrial services
18 report that Mr. Tiscione points you to is a report that
19 recommends release on bond. The Pretrial Services Agency
20 recommends release in this case. So I think particular note
21 should be taken of that.

22 And with respect to risk of flight and the fact
23 that a bracelet doesn't address risk of flight, I would
24 respectfully suggest that the pretrial services officer
25 present in the courtroom report to your Honor about how many

1 people are on pretrial release with bracelets or home
2 detention because that is frequent in this district. It
3 happens all the time, all the time. It's familiar and Mr.
4 Tiscione is arguing like it were ten years ago and no one
5 was familiar with employing the electronic bracelet.

6 And the GPS is new, and the GPS is something that
7 has been embraced, as I understand it from conversations
8 with members of the Pretrial Services Agency. It's been
9 embraced by the Pretrial Services Agency in this district.
10 They want to promote its use in this district, and it has
11 proved to be efficacious.

12 There is no suggestion by Mr. Tiscione -- he
13 references the fact that anyone who left who had been under
14 house arrest and fled hasn't been captured again. I don't
15 know where these statistics are coming from. Actually, I
16 heard no statistics. I don't know how many people because I
17 think the number is close to zero. I don't know how many
18 people have fled from home detention.

19 And I respectfully submit that this is frequently
20 used. There are mafia RICO cases pending in this district
21 right now where people are released on conditions and the
22 condition be home confinement with a bracelet. In the most
23 serious kinds of cases, cases even involving charges of
24 homicide, people have been released here and in the Southern
25 District in those cases under home detention. So home

1 detention has proved efficacious.

2 The travel to Israel, now there is no more
3 reference in Mr. Tiscione's argument about false documents.
4 He was there for six weeks. I don't think under any
5 analysis or anyone's view of the case that being in Israel
6 for six weeks, as documented by his passport, amounts to
7 living in Israel.

8 I don't believe that traveling to Florida or
9 traveling to California or traveling to the Bahamas, again,
10 under one's own name, one's own passport, is living in other
11 jurisdictions. He has -- and I stand by that proposition --
12 he has, in fact, been living with his parents for 27 years.

13 Mr. Tiscione said, well 16 cell phones. By the
14 way, he was in the cell phone business. But 16 cell phones
15 in his house doesn't mean he's a criminal.

16 Judge, with all respect, this detention hearing is
17 not to determine whether this defendant, whether my client
18 Mr. Braun, is a criminal. It's to determine whether he's
19 entitled to pretrial release on conditions. That's what the
20 detention hearing is about. And I think under all of these
21 circumstances, we have shown and we have met our burden of
22 rebutting the presumption.

23 THE COURT: The government has convinced me that
24 no combination of conditions can secure Mr. Braun's
25 presence. The government has pointed to what I believe is

1 substantial evidence of Mr. Braun's involvement in this
2 conspiracy, which involves really huge amounts of marijuana,
3 which means that there are huge amounts of money that he has
4 access to. Five hundred thousand dollars was seized in one
5 seizure alone.

6 The scale of this enterprise convinces me that
7 there are substantial funds that Mr. Braun is likely to have
8 access to, all of which could be used, of course, to pay any
9 losses that may be suffered by those who are prepared to put
10 up their homes and more importantly to facilitate any travel
11 and any effort to hide his whereabouts.

12 So I'm not convinced that there is clear and
13 convincing evidence that he would be a danger because he
14 would harm somebody physically. I don't buy that part of
15 the government's argument, but the government has persuaded
16 me that there is substantial evidence of Mr. Braun's
17 involvement in a high level, very sophisticated operation
18 involving millions and millions of dollars of drugs, which
19 makes him a risk of flight that cannot be overcome.

20 So that's the ruling. Detention is ordered.

21 MR. SHARGEL: Will we have something from the
22 Court in writing that I could use to press an appeal to the
23 district court?

24 THE COURT: I'm going to enter an order, which
25 will refer to the record.

1 MR. SHARGEL: Very well.

2 THE COURT: Certainly, the Court is relying on the
3 assertions made by the government with respect to the
4 evidence of Mr. Braun's involvement in this conspiracy and
5 the amounts of money that this conspiracy has generated.
6 The government has also persuaded me that it has substantial
7 evidence of intercepted conversations and intercepted other
8 kinds of communications that substantiate Mr. Braun's
9 involvement in this conspiracy.

10 There's no question about his travel, that he has
11 traveled. That means he has access to people in places in
12 foreign countries where he could find a "sucker," if that's
13 the right word. So those are all considerations. The
14 government has persuaded me under its submission and with
15 the further statements made today, so I'm relying on all of
16 it.

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I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in
the above-entitled matter.

A handwritten signature in black ink, appearing to read 'E. Barron', with a long horizontal stroke extending to the right.

ELIZABETH BARRON

June 4, 2010